

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

San Francisco, California

Date: May 26, 2005

Resolution No. L-317

**RESOLUTION****AUTHORIZING THE COMMISSION'S EXECUTIVE  
DIRECTOR TO CANCEL OR SUSPEND THE OPERATING  
PERMIT OF A CHARTER PARTY CARRIER UPON  
CONVICTION OF THE OWNERS OF CERTAIN  
MISDEMEANORS OR FELONIES INVOLVING THEFT OR  
DISHONESTY****BACKGROUND**

Pursuant to Chapter 7, Article 2 of the Public Utilities Code the Commission regulates the transportation of passengers by charter party carriers on the public highways in this state. No carrier may provide this service without first obtaining a permit from the Commission. The Consumer Protection and Safety Division evaluates the carrier's qualifications for a charter party carrier's permit by requiring the applicant to swear under penalty of perjury that he/she has not been convicted of a misdemeanor violation of the Charter Party Carrier's act or certain categories of felonies involving theft, fraud or dishonesty. The Commission may refuse to issue a permit if the applicant has committed any act constituting dishonesty or fraud.

**DISCUSSION**

Despite the staff's best efforts to use the qualification process to screen out individuals that are likely to take advantage of customers after engagement, there are a number of household goods carriers that violate Commission regulations governing their operations in California. A few carriers' conduct is so egregious that local authorities prosecute them for fraud and other unfair business practices.

Public Utilities Code Section 5378(a)(3) provides that this Commission may cancel, suspend or revoke the permit of a carrier upon a misdemeanor conviction under Chapter 7, Article 2 of the Public Utilities Code or a felony conviction for

robbery, burglary, larceny, fraud, or intentional dishonesty for personal gain. The Commission may take action under 5285(d) without prior notice and opportunity to be heard in a formal evidentiary hearing.

We believe the cancellation, suspension or revocation of a household goods carrier's permit should occur immediately after conviction of a qualifying misdemeanor or felony so that the carrier's opportunity for further misconduct is minimized at the earliest possible date. For this reason we are delegating to the Executive Director authority to cancel, suspend or revoke the permit of a household goods carrier upon notification by the General Counsel of the Legal Division that the carrier has been convicted of a qualifying misdemeanor or felony. The Executive Director shall report a cancellation, suspension or revocation of a charter party carrier's permit ordered pursuant to this resolution to the Commission at the earliest Commission meeting after action is taken.

Public Utilities Code § 311(g)(1) requires these items to be served on all parties and subject to at least 30 days public review and comment before the Commission may vote on them. Section 311 (g)(3) and Rule 77.7.(f)(9) provide that the 30-day period may be reduced or waived by the Commission upon a finding of public necessity. The comment period on this item is being reduced to twelve days under this authority.

Comments were filed on \_\_\_\_\_, by \_\_\_\_\_.

### **PROCEDURE**

Resolution L-317 directs the Executive Director to cancel, suspend or revoke the operating authorities of charter party carriers on the basis of a verified report from the Commission's General Counsel that the carrier's owner or principal has been convicted of certain categories of felonies or of misdemeanor violations of the Charter Party Carrier Act. Section 5378(a)(3) of the PU Code gives the Executive Director the authority to cancel, suspend or revoke the operating authority of a charter party carrier if he learns that the owner or principal has been convicted while it holds operating authority from the Commission of a misdemeanor violation of the Charter Party Carrier's Act or certain categories of felonies involving theft or dishonesty.

Section 5378(a) reads, in part: "The commission may cancel, revoke, or suspend and operating permit or certificate issued pursuant to this chapter upon any of the following grounds: (3) The conviction of the charter-party carrier of passengers of any misdemeanor under this chapter while holding operating authority issued by the commission or the conviction of the carrier or its officers of a felony while holding operating authority issued by the commission, limited to robbery,

burglary, larceny fraud, or intentional dishonesty for personal gain."

In order to ensure fairness in the application of this procedure, the General Counsel shall obtain a written verification of the criminal conviction from the court wherein the carrier or principal was convicted. This remedy shall be limited to convictions that have occurred while the individual has an active operating permit with the Commission. Guilty pleas or pleas of *nolo contendere* to covered offenses shall be considered to be convictions. Parties who have been convicted but whose opportunity to appeal the conviction has not expired will only have their operating permits suspended until the expiration of the applicable statute of limitations for appeal or (in the event a formal appeal has been filed) the appeal has been disposed of. If the conviction is overturned on appeal the suspension of the operating permit will be rescinded.

### **FINDINGS OF FACT**

1. Despite the best efforts of the Commission staff and the Commission to screen out individuals that are likely to engage in fraudulent or other unfair business practices, a few individuals receive permits to operate as household goods carriers and thereafter take advantage of or deterred customers after engagement.
2. The conduct of a few charter party carriers is so egregious that local authorities prosecute and obtain convictions for fraud and other unfair business practices.
3. Delegation of authority to the Executive Director will allow staff to protect consumers from unfair and/or illegal business practices.
4. Prompt action on the General Counsel's recommendations is necessary for the protection of the public. The proposed resolution would permit the full implementation of the actions prescribed by the Public Utilities Code for charter party carriers.

### **CONCLUSIONS OF LAW**

1. Public Utilities Code Section 5378(a)(3) provides that this Commission may cancel, suspend or revoke the permit of a charter party carrier that has been convicted of certain misdemeanors or felonies without prior notice or opportunity to be heard through a formal hearing.

2. The Executive Director may be authorized under Public Utilities Code Section 7 through this resolution to suspend, cancel or revoke a household goods carrier's permit. The Executive Director's actions will be ministerial based upon the Commission's stated policy to implement Section 5378(a)(3) at the earliest possible date to protect consumers.
3. Whenever the Commission suspends the certificate of any charter party carrier corporation pursuant to subdivision(a)(3), the Commission shall furnish the corporation written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days after a written request therefore is filed with the Commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the corporation shall show cause why the suspension should not be continued. At the conclusion of the hearing, the Commission may, in addition to any other applicable penalty provided in this part, terminate the suspension, continue the suspension in effect, or revoke the certificate. The Commission may revoke the certificate of any charter party carrier suspended pursuant to subdivision(a)(3) at any time 90 days or more after its suspension if the Commission has not received a written request for reinstatement from the carrier for a hearing with the Commission.
4. Any applicant for a charter-party Carrier certificate or permit denied pursuant to Section 5378(a)(3) whose denial has not been reversed as a result of the hearing, that wishes to obtain a certificate or permit shall reapply for the desired authority.

#### **ORDER DELEGATING AUTHORITY**

1. The Executive Director is authorized pursuant to Public Utilities Code Section 7 to cancel, suspend or revoke the permit of a charter party carrier upon notification by the General Counsel of the Legal Division that the carrier has been convicted of a misdemeanor violation of the Charter Party Carrier's Act or certain categories of felonies as defined in Public Utilities Code Section 5378(a)(3).
2. The Executive Director shall report to the Commission after taking action pursuant to this resolution at the earliest Commission meeting of the cancellation, suspension or revocation of a charter party carrier's permit.
3. Resolution L-317 is enacted.

4. The Executive Director shall suspend the operating authority of any Charter Party Carrier, upon written notification from the Commission's General Counsel that : the carrier or one or more of its officers has been convicted of a misdemeanor violation of the Charter Party Carrier Act or has been convicted of certain felonies including burglary, larceny, robbery, fraud or intentional dishonesty for personal gain. The carrier may request a review of the determination by the Executive Director within five days of the carrier's receipt of the notice of the determination.
5. The Executive Director shall deny any application for new or renewal charter party carrier authority upon receipt of written notification from the General Counsel that carrier or the carrier's owner or principal has been convicted of misdemeanor violations of the Charter Party Carrier's Act or the above noted felonies. The carrier may request a review of the determination by the Executive Director, within five days of the carrier's receipt of the notice of the determination.
6. The Executive Director shall promptly furnish the carrier with written notice of any suspension, revocation or denial under paragraphs 2 or 3 above, or 6 below. The notice of any such suspension shall inform the carrier that it may appeal the determination within five days of receipt of the notification. The notice of any suspension or revocation the operating permit shall inform the carrier that it may reapply for the desired authority. In addition, the notice of any such suspension or of any such denial of **renewal** authority shall inform the carrier: that if it wishes to contest the Commission's action it may obtain a hearing by filing with the Commission's docket office an original and five (5) copies of a completed Application for Hearing form, with a copy thereof furnished to the California Highway Patrol. (A blank copy of this form shall accompany the notice sent to the carrier.) On receipt of a completed Application for Hearing form, the ALJ Division shall schedule a hearing, to be held within 21 days from the date the form was filed (unless the carrier requests a postponement.) The notice of any suspension pursuant to this resolution shall also inform the carrier that its operating authority will be revoked 90 days after suspension, if it has not been reinstated by then, and if no hearing has been requested.
7. The Executive Director shall reinstate a Charter-Party Carrier, suspended pursuant to this resolution upon written recommendation from the hearing officer that the carrier's conviction record is erroneous, not applicable because the convicted individual is no longer part of the carrier's operation, or other good cause shown in the hearing.

8. After 90 days, any operating authority suspended pursuant to this resolution and not eligible for reinstatement pursuant to a hearing officer's recommendation shall be revoked by the Executive Director, unless the carrier has requested a hearing pursuant to paragraph 4 hereof.
9. Each denial, suspension or revocation issued under authority of this resolution shall recite that it was issued pursuant to this resolution. Each such denial, suspension or revocation, when signed by the Executive Director, shall be deemed to be the order of the Commission.

This resolution is effective today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of May 26, 2005 the following Commissioners approved it:

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STEPHEN A. LARSON  
Executive Director